

Criminal Misc. Application No. 169 of 2003

Mahesh Chandra Sharma @ Mahesh Sharma Applicant.

Vs.

State and another

...Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Sandeep Tandon learned counsel for the applicant and learned AG.A.

This is a petition under section 482 of the Code of Criminal Procedure (hereinafter referred as the Code) for quashing of the order dated 30-11-2002 passed by Special Magistrate(C.B.I.) Dehradun in trial No. 1558 of 2002; C.B.I. vs. Mahesh Chandra Sharma. The application paper No. 114-B asking for direction to deliver the copy of the statement of one of the witness named as Mophmma Tasdiq was rejected.A revision was then preferred.By the judgment and order dated 15-2-2003 passed by the Additional Session Judge/ Fast Track Court Dehradun, criminal revision No. 103/2002 against the said order of the learned Magistrate, was dismissed.

The application paper No. 114-B. was preferred by the petitioner/accused with the allegation that he was not supplied the copy of the statement of the above witness as contemplated under section 207 of the Code and that he had been deprived of his right of defence on this account. The attention was drawn to the statement of P.W.10, I.O. who submitted that the statement of the said witness during investigation was endorsed in memorandum form in English which was made part of the case diary but some how the said witness went on to say that the same sheet on which the statement of the witness was endorsed is not kept in the case diary.. The learned Magistrate did not accept the contention of the petitioner-accused by observing that the compliance of the provision of section 207 of the Code was made. The learned Session Judge in revision agreed the view so taken and the revision was also dismissed.

Today I have had the opportunity to peruse the original case diary which contain the statement of said witnesses Sri Mohammad Tasdiq and the same was duly paginated as 87 and 88 and it was prepared by the I.O. (P.W.10.). On query learned counsel for the petitioner produced the copies of the statement of the witnesses which were delivered to the accused under section 207 of the code. In these statements the copy of the statement of the said witness Mohammad Tasdiq is also there and it bear same page serial Nos. 87 and 88. On perusal it is clear that it is the xerox copy of the statement of thee said witness in the case diary. Considering this aspect of the matter the submission made by the petitioner/accused is without substance and it is evident that he was not deprived of his right to take up proper defence during the cross-examination of the relevant witnesses. The learned Magistrate as well as the learned Sessions Judge were therefore, fully justified in rejecting his contention and their being no merit in this petition the same is dismissed.

It is directed that the trial shall be expedited preferably on day to day basis.

(Irshad Hussain, J.)

Dated: 15.9.2003

ISB